

HRC49 Side Event – 10 March 2022

Terrorizing Human Rights Defenders: Counter-Terrorism as a Tool of Repression in the MENA Region

Hosted by the Cairo Institute for Human Rights Studies

Opening Remarks by Special Rapporteur Ní Aoláin

Thank you to the Cairo Institute for Human Rights Studies, a long and distinguished organization with a long history of working on these issues, for convening this timely event, and to each speaker for so courageously and passionately shedding light on their personal experiences and respective country situations.

My mandate has been monitoring these recent developments with great concern. We have issued multiple communications on several specific cases in the MENA region, including with regard to the alleged arbitrary detention of my co-panelist Ramy, who I'm very glad to see here today, and acknowledge the significant work done by his extraordinary wife to ensure his relief. We can't forget the enormous burden that families face in this context. We also acknowledge the challenges faced by individual human rights defenders across the MENA region, including in Egypt, Bahrain, and Algeria.

I and a number of Special Procedures bodies have also issued a press release on Israel's "terrorist organization" designation of the six Palestinian organizations and a communication on the alleged use of Pegasus spyware on these organizations, including the staff of Addameer, which is represented by my co-panelist Sahar today. I've expressed deep concern about the effectively complete destruction of Palestinian civil society and the importance that that civil society infrastructure has played over many decades. The existence of that Palestinian civil society has been essential to protecting the rule of law, human rights, and ultimately peaceful resolution of an occupation in conflict. Civil society is the essential mechanism that not only enables a healthy society but is also indispensable to the resolution of conflict.

We have also issued communications on counter-terrorism and NGO laws and regulations in Algeria, Egypt and across the MENA region. We have been particularly concerned by the use of counter-terrorism financing measures to attack and undermine the integrity of the work of civil society.

My mandate's role is to engage constructively and consistently with States, and I will continue to do so on these particular cases and the broader counter-terrorism framework. States need to internalize that it is only with human rights compliant counter-terrorism, as required under Security Council Chapter VII resolutions, that we will see the protection of human rights and prevention of violence in many societies.

I would like to underscore that these specific cases and country situations are not one-off, discrete incidents. As Special Rapporteur since 2017, I have seen firsthand and will continue to document the rising tide of abuse of counter-terrorism and countering violent extremism

measures across the globe by States seeking to crack down on civil society, democracy advocates, human rights defenders, cultural actors, and humanitarians. As I explained in my 2019 report to the Human Rights Council on closing civic space, since 9/11, counter-terrorism laws and regulations have dramatically proliferated and at the same time, Governments have increasingly adopted harsh laws and regulations restricting civic space, and the two are intimately connected. Often these laws and regulations are contemporaneous and doing the same thing. Increasingly they involve administrative and other informal measures that seek to sidestep the traditional consensus-making and public consultations central to formal legislation and vital for protecting the right to take part in the conduct of public affairs.

Turning to a little statistics: since my mandate's inception (2005), 66% of all relevant communications sent to Governments by the mandate have related to the misuse and abuse of counter-terrorism measures against civil society. This is lousy counter-terrorism. It's also terrible for human rights. What we see is core and well-established rights and freedoms, including the rights to freedom of association and freedom of expression, and the right to participate in public affairs and practice one's religious faith, the right to have a fair public hearing, are all under mounting attack across the globe. None of this is making us safer. None of this is making us more secure. And as we have heard today, civil society actors have been subject to arbitrary detention and denied the most fundamental rights and freedoms, including fair trial and due process rights abuse.

It is clear that States are drawing from the same playbook and inspiring one another to do the same. The playbook commonly starts with an overly expansive and purposefully vague definitional framework that takes advantage of the fact that there are no internationally agreed-upon definitions for terrorism and violent extremism. The definitions often forego what the mandate deems to be the crux of terrorist activities: the intent or danger that an act will lead to the actual commission of violence and physical harm. Increasingly, States are criminalizing a catch-all of activities including mere criticism of the government or engagement with UN actors to talk about what's happening in their domestic contexts. I've also seen a movement into the pre-criminal space. In parallel, the mandate has also observed the movement toward criminalizing mere "extremism" or ideologically motivated extremism, absent any qualification.

These expansive definitions are often coupled with the enhancement of State surveillance powers, interfering with the most intimate of personal life. On top of that, we have seen the use of secret classified evidence and the limitation of fair trial safeguards, and all of that is coupled with the implementation of highly stringent and disproportionate penalties like lifetime imprisonment (often with extended pre-trial detention), and asset seizures. These measures also often coincide with NPO laws and regulations that are not intended to ensure the functioning and breathing of civil society but are all about choking civil society through undue registration and reporting requirements on civil society organizations, including exorbitant registration fees and burdensome requirements to share lists and identities of all individual beneficiaries and to record and assess all financial transactions.

All of this is silencing human rights defenders and disincentivizing engagement in human rights work because the costs are so high. As my co-panelists have clearly highlighted, the human costs

cannot be overstated. The consequences are absolutely debilitating for designated individuals, their families, their associations, and their communities.

And let me be clear, the abuse of counter-terrorism measures to target human rights defenders and civil society organizations does not just violate international human rights law and weaken the international rule of law, but it works against all of our national security interests. It is well-documented that respect for international human rights law treaties and norms is a mutually reinforcing objective to advancing security. And a vibrant environment for and meaningful engagement with civil society is absolutely essential to making us all safer.

Let me conclude with three recommendations to Member States and stakeholders present today:

First, I urge all Member States to provide and protect the full range of fair trial and due process rights as required under international human rights law to any individual detained—including in pre-trial detention—and subject to prosecutions and other sanctions under counter-terrorism laws and regulations.

Second, we urge all Member States and stakeholders to reaffirm the precise definition of “terrorism” as adopted in Security Council Resolution 1566 and take into account the model definition offered by my mandate to ensure we do not have laws that exceed the proper scope of terrorism. And I call on you to work to rescind any laws or regulations that criminalize “extremism” absent any qualification.

Third, all of us must play a role in documenting and shedding light on the misuse and abuse of counter-terrorism measures to target human rights defenders and civil society organizations. This requires independent oversight, monitoring and evaluation of State CT programs and policies, including capacity building and technical assistance that the UN itself provides to States in counter-terrorism. It also requires unflinchingly and publicly calling out States for human rights violations and civil society abuses to counter-terrorism – even when they are our friends and allies – and underscoring both how unlawful and counter-productive they are. Finally, it requires showing solidarity and full support to each of the human rights defenders, who stand bravely and alone against the overwhelming nature of the State power acting against them.

Concluding Remarks

At a global level, this problem is a systemic, entrenched, structural problem of the global misuse of counter-terrorism and it is facilitated and enabled by a global architecture and normative framework of counter-terrorism that has evolved since September 11, 2001. Unless we undo that architecture and call out the permissive space that has been created through the UN Security Council that enables States to hide behind the language of terrorism to attack civil society, we are only addressing this problem piecemeal. We have enormous work to do, certainly in Geneva but I would underscore the extent to which some of this work has to be done in the security spaces in New York.

Second, in the context of the Global Counter-Terrorism Strategy which was reviewed last year, we have seen significant gains in the recognition by many States, including a range of diverse

States, that the attacks on civil society are counter-productive. They're not helping; they're making things much worse, contributing to authoritarianism and democracy backsliding, and they're part of the systemic problem and challenge we're facing in the context of the weakening multilateral system. This is not just a case-by-case country-by-country issue, but it is a massive global problem.

Third, we are seeing, including in counter-terrorism spaces like FATF, UNOCT, CTED, and other bodies, an increasing understanding of the negative effects that this challenge has on the actual risks of terrorism that do exist in certain States. We need that recognition that this is profoundly counterproductive and that only when we call out what is happening at the national level, can we solve the global challenges that we face and make progress.

The last thing that I would underscore is that all of you, all of the organizations we have heard from, all of the individuals here – you may not feel like your voices are being heard, but they are actually permeating through. Part of the reason that this conversation is so live and moving out of human rights spaces and into counter-terrorism spaces is because your voices are being heard. I can honestly and positively say that the words you say, the things you describe, the challenges you face are being heard and our challenge now is to translate the hearing into concrete actions and put an end to the systematic misuse of counter-terrorism measures across multiple countries, multiple regions, and within the UN system.

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